

## HB 4964: Sentencing Commission

House Judiciary Committee

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### Testimony of Citizens Alliance on Prisons & Public Spending

By Barbara Levine

Good morning, Chairman Condino and Members of the Committee. CAPPs, the Citizens Alliance on Prisons and Public Spending, is a public policy organization that is concerned with the social and economic costs of excessive incarceration. As the state grapples with its continuing fiscal crisis, there is growing recognition that we need to re-examine the \$2 billion corrections budget and look for more cost-effective ways to protect public safety. There is growing awareness that Michigan's incarceration rate is substantially higher than that of its Great Lakes neighbors. And there is growing dismay that the persistent growth in corrections is draining money from other critical state services.

Prison is the most expensive way to respond to criminal behavior. Unfortunately, in some cases it is the only way. But there are a lot of others that are often more cost-effective. CAPPs advocates using incarceration only to the extent actually necessary to punish appropriately and to protect public safety. We need to undertake a thorough, objective assessment of how well we are meeting that goal. Restoring the sentencing commission is a critical first step in that process.

Some of us have been around long enough to remember when there were no sentencing guidelines. It wasn't pretty. More than 150 judges exercised enormous discretion without any guidance or external constraints. Sentences were influenced by personal predilections, local norms, even racial bias. People in adjoining prison cells who had similar backgrounds and similar offenses were serving vastly different sentences. Some sentences were well below the statewide average; some were well above it.

When the Supreme Court first developed guidelines to address the situation, it didn't make normative decisions about what sentences ought to be. It just averaged the sentences judges were already giving. Its guidelines represented the range within which most judges already operated. The goal was to reduce disparity and bias by ensuring that similarly situated people were treated similarly.

When the sentencing commission was established, it had a statutory mandate to do much more. For one thing, it was required to ensure that punishment was proportional to each offender's crime and background. So it wasn't OK to treat everyone too harshly so long as they were mistreated equally! The commission was required to develop an overall scheme in which crimes against people were more severely punished than other offenses and in which the alternatives to prison were carefully considered. And the commission was required to base its guidelines on hard data— data about sentencing practices, prison and jail usage, and the impact of the guidelines themselves.

When the commission was eliminated, we lost that ability to see the big picture. The guidelines were left to operate without the ongoing monitoring and refinement that the statute had envisioned. Of

course the legislature could and did tinker with the penalties for individual crimes. But no one was assessing how well the guidelines were being followed or their impact on prisons and jails. No one was responsible for ensuring that the whole scheme was working. Are the sentencing ranges too wide or too narrow? Are the right cases being steered toward intermediate sanctions? How has our sense of what is proportional punishment changed over time? How does it compare to what is considered proportional in other jurisdictions? What does the latest research say about which sanctions are most effective and the impact length of prison stay has on public safety? Have the guidelines themselves had unintended consequences?

These are not the sorts of questions the legislature can examine when it makes a piecemeal adjustment to the guidelines by adding a crime or raising a penalty. There isn't the time or the resources or the expertise. The advantage of a commission is that it is a single-purpose body with dedicated staff. It can steep itself in the data, develop cohesive norms through ongoing debate and consistently make its assessments in the broad context of the total sentencing scheme. And, of course, to state the obvious, its bi-partisan, cross-disciplinary composition promotes concentration on the subject matter and helps insulate it from the routine political pressures that are especially strong in the area of criminal justice.

Sentencing guidelines are here to stay. At this point the only question is who will maintain them. Functioning without a commission has not served us well. This complex scheme has an enormous impact on everything from plea bargaining to community corrections programs to the size of our state prison system, not to mention the lives of tens of thousands of Michigan citizens. It was never meant to be set in motion and then left unattended. It may be that details of how the commission is composed and how it operates could be improved. But the need to restore the commission seems undeniable.

I'm aware that one specific area of controversy is the commission's mandate to consider the capacity of prisons and jails. Frankly, that is a debate I just don't understand. Allocating scarce resources is what government does. We ration health care and education by deciding how much we will spend on community health, higher ed and local school aid. We ration the quality of foster care and aid to the elderly by deciding how much we will pay caregivers. We ration public safety by setting the size of revenue sharing payments that are often used to pay for police and fire services. It isn't wrong to reserve prison bedspace for the people who are currently the most dangerous. It would be irresponsible not to.

Also, frankly, the requirement that the commission "consider the likelihood that the capacity of state and local correctional facilities will be exceeded" is not a very strong one. It was there when the commission adopted the guidelines in 1998 and the prison population has grown by 5,000 since then. Simply requiring consideration does not dictate a particular result. CAPPs would much prefer a directive that prison sentences only be imposed when the serious nature of the crime or the threat the defendant poses to the safety of the community makes incarceration the only appropriate alternative. But at least requiring consideration of capacity promotes a constant reflection on priorities. Recognizing that prison and jail beds are scarce commodities makes us think hard about who we are locking up and why. And having a commission do that thinking for us is a very responsible thing to do.

Thank you.